STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 19,953
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services finding her no longer eligible for Medicaid until she meets a spenddown amount of $1,735.20 in the six-month period beginning October 1, 2005. The issues are whether the petitioner's adult son can be considered a member of her household.

FINDING OF FACTS

1. The facts are not in dispute. The petitioner is disabled and lives with her son, who turned twenty-one years of age on September 7, 2005. Her son is a college student, but he is dependent on the petitioner for all his basic living expenses.

2. Prior to a review by the Department in September 2005 the petitioner received Medicaid as a member of a two-person household consisting of her and her son. The petitioner was financially eligible because the Department allowed her and her son to split the household income, which consisted solely of the petitioner's receipt of Social

Security and a disability policy that totals $1,260.20 a month.

3. Based on information provided by the petitioner at that review the Department notified her that her eligibility for Medicaid would end as of October 1, 2005 due to her son no longer qualifying as a "dependent child". The petitioner was further notified that she would become eligible for Medicaid as a single-person household when she incurred medical expenses of $1,735.20 between October 1, 2005 and March 31, 2006. Her son was found eligible for VHAP, and the petitioner was found eligible for VScript effective October 1, 2005.

ORDER

The Department's decision is reversed.

REASONS

There is no dispute that the petitioner is *categorically* eligible for Medicaid based on her disability (i.e., she is "SSI-related"). The Department's regulations provide that only "dependent children" can be considered members of an SSI-related individual's Medicaid group for purposes of determining that group's *financial* eligibility. W.A.M. § M221. The SSI-related Medicaid regulations specifically define a "dependent child" as being either "under age 18 . . . or "a student age 18 *through* 21" (emphasis added). W.A.M. § M220.1(a). The Department's position in this matter

is that, contrary to the plain meaning of the word "through", this regulation does not include students once they *turn* 21.

The Department argues that what-it-admits-to-be a "literal reading" of the above regulation is contrary to the "statutory scheme" and produces an "irrational consequence". However, the Department points to no provision of the Medicaid program with which such a plain reading of § M220.1(a) is actually inconsistent.

Clearly, § M220.1(a) was intended to extend "dependent child" status beyond the age of 18 for young adults who were still students living in their SSI-related parents' households. The Department is correct that § M220.1(c), which speaks of to the *categorical* (as opposed to *financial*) status of an "ineligible child", defines such a child as "under age 21". This is not at all inconsistent, however, with § M220.1(a), which concerns itself solely with the *financial* eligibility of *parents*. The petitioner does not maintain that her son, himself, is eligible for Medicaid. Nothing in the regulations states or intimates that her son's *categorical* eligibility for Medicaid is at all relevant to the question of whether he is a "dependent" in determining the petitioner's *financial* eligibility.[1]

Similarly, the Department is correct that the rules for determining "financial responsibility" for children of *ANFC*-

[1] The hearing officer could not find any other provision anywhere in the Medicaid regulations that even uses the term "ineligible child".

related adults for Medicaid, and all adults for VHAP, define such "children" as "under the age of 21". See W.A.M. §§ M331(2) & 4001.8(b). In essence, however, the Department is again comparing apples and oranges. There is nothing at all "irrational" about a regulation that provides slightly more liberal eligibility criteria for disabled (i.e., SSI-related) adults than those in other eligibility categories. Moreover, the fact that the regulations for ANFC-related Medicaid and VHAP *clearly* define dependent children as those "under 21" can just as reasonably constitute an argument that the Department *could have* just as easily defined children the same way under § M220.1(a), *but chose not to do so*.

Therefore, even if the Department *now* represents that it did *not* intend to extend dependent child status to 21-year-old children of SSI-related parents, absent a *conflict* with the underlying statutory or regulatory "scheme", case law is clear that the "plain meaning" of the regulation in question is controlling. See e.g., *Town of Killington v. State*, 172 Vt. 182, 188-189 (2001). Furthermore, it is "axiomatic" that an agency must follow its own regulations "until it rescinds or amends them". *Lanphear v. Tognelli*, 157 Vt. 560,563 (1991); *In re Peel Gallery*, 149 Vt. 348,351 (1988).

In this case, there is no question that the petitioner, in fact, continues to support her son. Given that the plain wording of the applicable regulation clearly considers him a "dependent child" for purposes of Medicaid until he reaches

his 22nd birthday, the Department's decision must be reversed.

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